

United States District Court  
Southern District of Texas  
FILED

**TDH**

JUN 10 2005

Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

United States District Court  
Southern District of Texas  
ENTERED

JUN 14 2005

Michael N. Milby, Clerk  
Laredo Division

UNITED STATES OF AMERICA

v.

JUAN GONZALEZ-MENDOZA

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CRIMINAL NO. 04 – CR – 121 ✓

4:05cv1442

**ORDER**

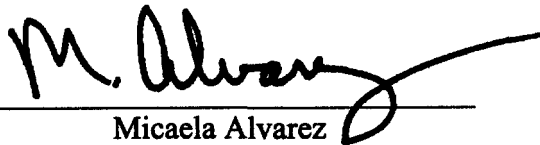
Pending before the Court is Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [Doc. No. 35]. Petitioner currently has a direct appeal, filed September 9, 2004, pending before the United States Court of Appeals for the Fifth Circuit [See Doc. 22].

Unless extraordinary circumstances are present, a § 2255 motion should not be heard while a direct appeal is pending. *Bowen v. Johnston*, 306 U.S. 19, 26-27 (1939); *see also* 28 U.S.C. § 2255 Rule 5 advisory committee's note 1 (there is no "jurisdictional bar" to entertaining a §2255 motion during the pendency of a defendant's direct appeal, but "orderly administration of criminal law precludes considering such a motion absent exceptional circumstances").

The Petitioner in this case has failed to make the requisite showing of "exceptional circumstances;" therefore, his Motion to Vacate, Set Aside, or Correct Sentence is **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

DONE this 10<sup>th</sup> day of June, 2005, at Laredo, TX.

  
\_\_\_\_\_  
Micaela Alvarez  
UNITED STATES DISTRICT JUDGE

**TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT.**

CLERK  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
P.O. BOX 597  
LAREDO, TEXAS 78042-0597

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